Eight Mile Style, LLC et al v. Apple Computer, Incorporated
Doc. 38 Att. 2

EXHIBIT 1

Plaintiffs' First Set of Requests for Production of Documents dated February 12, 2008

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EIGHT MILE STYLE, LLC and
MARTIN AFFILIATED, LLC

Plaintiffs,

vs.

Case No. 2:07-cv-13164
Hon. Anna Diggs Taylor

APPLE COMPUTER, INC. and
AFTERMATH RECORDS d/b/a
AFTERMATH ENTERTAINMENT

Defendants.

Norman C. Ankers (P30533)
Michael A. Lisi (P39597)
Brian D. Wassom (P60381)
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226-3506
(313) 465-7306
nankers@honigman.com
mlisi@honigman.com
bdw@honigman.com
Attorneys for Plaintiffs

Richard S. Busch (TN BPR#14594)
King & Ballow
1100 Union Street Plaza
315 Union Street
Nashville, TN 37201
(615) 259-3456
rbusch@kingballow.com
Attorney for Plaintiffs

PLAINTIFFS' FIRST SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS

Plaintiffs Eight Mile Style, LLC ("Eight Mile") and Martin Affiliated, LLC ("Martin") (collectively, "Plaintiffs"), by its attorneys, pursuant to Rule 34, Federal Rules of Civil Procedure, requests Defendants Apple Computer, Inc. ("Apple") and Aftermath Records ("Aftermath") to produce and make available for inspection and copying at the offices of King & Ballow, 315 Union Street, Suite 1100, Nashville, Tennessee 37201, the documents, electronically stored information, and things specified below, on or before thirty (30) days from the service of these Requests.

I. DEFINITIONS

A. "You" or "Defendants" or "Defendant" refers to Defendants Apple Computer, Inc. and Aftermath Records, collectively or separately, named in and referred to as such in the Complaint in the above-referenced case, their agents, representatives, attorneys, and/or any other persons acting or purporting to act on their behalf.

B. "Aftermath" refers to Defendant Aftermath Records d/b/a Aftermath Entertainment its parent company, its subsidiaries, its affiliates, and any other related company, as well as their agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

C. "Apple" refers to Defendant Apple Computer, Inc. its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

D. "Plaintiffs" collectively refers to Plaintiffs Eight Mile Style, LLC and Martin Affiliated, LLC, named in and referred to as such in the Complaint in the above-referenced case, their agents, representatives, attorneys, and/or any other persons acting or purporting to act on their behalf.

E. "Eight Mile" refers to Plaintiff Eight Mile Style, LLC its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

F. "Martin Affiliated" refers to Plaintiff Martin Afiiliated, LLC its agents, representatives, attorneys, and/or any other persons acting or purporting to act on its behalf.

G. "UMG" or "Universal" refers to UMG Recordings, Inc., its parent company, its subsidiaries, its affiliates, and any other related company, as well as their agents, representatives, attorneys, and/or any other persons or entities acting or purporting to act on their behalf.

H. "Eminem" refers to Marshall B. Mathers III, his agents, representatives, attorneys, and/or any other persons acting or purporting to act on his behalf.

I. "Eminem Compositions" shall mean the musical compositions written and composed, in part, by Eminem, which are attached as collective Exhibit A to the Complaint in this action.

J. "1995 Agreement" shall mean the Exclusive Artist's Recording Agreement entered into by F.B.T. Productions, LLC ("F.B.T.") and Eminem on November 28, 1995, as amended on November 5, 1998, February 22, 1999 and November 28, 1999.

K. "March 9, 1998 Agreement" shall mean the agreement between F.B.T. and Aftermath whereby F.B.T. agreed to furnish to Aftermath the exclusive recording services of Eminem.

L. "Letter of Inducement" shall mean the letter from Eminem, accepted and agreed to by Aftermath, whereby Eminem acknowledged and approved of the agreement between F.B.T. and Aftermath for Eminem's exclusive recording services.

M. "Novation" shall mean the novation of the March 9, 1998 entered into by F.B.T., Eminem, Interscope, and Joel Martin whereby F.B.T. assigned all of its rights under the March 9, 1998 Agreement to Eminem, Eminem assumed certain of F.B.T.'s rights and obligations to Aftermath, and Aftermath assumed such rights to Eminem.

N. "2003 Agreement" shall mean the agreement entered into by Aftermath and Eminem on August 22, 2003 which expressly affirmed the 1995 Agreement, the March 9, 1998 Agreement, the Letter of Inducement, and the Novation.

O. "2004 Amendment" shall mean the modification of the Novation entered into on November 1, 2004 by F.B.T. and Eminem, on the one hand, and Aftermath, on the other hand.

P. "Mastertone Agreement" shall mean the Mastertone License Agreement entered into by Eight Mile and Martin on the one hand and Interscope Records, a division of UMG Recordings, Inc., on August 26, 2005 granting a limited license to create and distributing mastertone recordings of the Eminem Compositions.

Q. "Document," "Electronically Stored Information," and "Things" are defined to be synonymous in meaning and equal in scope to the usage of these terms in FRCP Rule 34. A draft or non-identical copy is a separate document, electronically stored information, or thing within the meaning of this term.

R. "Communication" shall mean any transmission of information by oral, graphic, written, pictorial, or other perceptible means, including, but not limited to, telephone conversations, letters, documents, memoranda, notes, telegrams, facsimile, transmissions, electronic mail, meetings, and personal conversations.

S. "And" and "or" each shall be construed either conjunctively or disjunctively as necessary to bring within the scope of these requests for production of documents, electronically stored information, and things any information or document that might otherwise be construed to be outside its scope.

T. References to the plural shall include the singular; references to the singular shall include the plural.

U. References to the feminine shall include the masculine; references to the masculine shall include the feminine.

V. All legal terms, accounting terms, and other technical terms associated with a particular industry, profession or identifiable body of knowledge shall have the meanings customarily and ordinarily associated with those terms with those terms within that industry, profession or discipline.

II. INSTRUCTIONS

1. This Request for Production of Documents, Electronically Stored Information, and Things is a continuing Request. If any additional information or documents relating in any way to this Request are acquired or discovered subsequent to the date of Defendants' response, up to and including the time of trial, these documents shall be furnished to Plaintiffs promptly after such documents are discovered.

2. If any Defendant once had any document requested in this Request for Production of Documents, Electronically Stored Information, and Things but said document, electronically stored information, or thing was destroyed, lost, given, or loaned to another, or is otherwise unavailable for inspection, furnish Plaintiffs with:

A. The name and address of all other persons who may have said document, electronically stored information, or thing;

B. A summary of the contents of said document, electronically stored information, or thing; and

C. The date and reason(s) why said document, electronically stored information, or thing was destroyed, lost, given, loaned or otherwise became unavailable.

3. As to any document(s), electronically stored information, or thing(s) requested to be produced hereunder as to which you or your counsel assert any claim of privilege and withhold such document, electronically stored information, or thing, your responses shall provide by way of identification of each document, electronically stored information, or thing the following information:

A. The nature of such document, electronically stored information, or thing;

B. The name(s) of the author, sender, and recipient of each original, copy, or draft of such document, electronically stored information, or thing;

C. The name(s) appearing on any circulation list associated with such document, electronically stored information, or thing;

D. A statement of the subject matter of such document, electronically stored information, or thing; and

E. A statement of each privilege asserted to such document, electronically stored information, or thing.

4. The documents, electronically stored information, or things produced pursuant to this Request shall be separately produced for each paragraph of the Request or, in the alternative, shall be identified as complying with the particular paragraph(s) of the Request to which they are responsive.

III. DOCUMENT, ELECTRONICALLY STORED INFORMATION, AND THINGS REQUESTS

1. Each and every document that in any way refers to, relates to, or pertains to, or that you relied on or reviewed in preparing each and every allegation contained in your Answer and affirmative defenses.

2. Each and every document that in any way refers to, relates to, or pertains to your answers and responses to Plaintiffs' First Set of Interrogatories, including all documents that you relied on or reviewed in preparing your answers thereto.

3. Each and every document in your custody, possession, or control that was obtained from Plaintiffs, Eminem, or any third party that in any way relates to, refers to, or pertains to, the reproduction, distribution, or sale of the Eminem Compositions through Apple's iTunes Store.

4. Each and every document that relates to the reproduction, distribution, performance, and/or sale of sound recordings of the Eminem Compositions in any digital form including but not limited to interactive and non-interactive streaming transmissions, permanent and conditional downloads, mastertones and ringtones.

5. Each and every internal or external communication that relates to, refers to, or pertains to, the reproduction, distribution, or sale of the Eminem Compositions that form the subject matter of this lawsuit in any digital form including but not limited to interactive and non-interactive streaming transmissions, permanent and conditional downloads, mastertones and ringtones.

6 Each and every license, contract, or agreement for whatever purpose, that have been entered into or issued by you and/or executed by any party thereto concerning the Eminem Compositions, for any purpose, including but not limited to the reproduction, distribution, or sale of sound recordings of the Eminem Compositions for digital

download, streaming, mastertones, and ringtones.

7. Copies of each and every license request received relating to the reproduction, distribution, performance, and sale of sound recordings of the Eminem Compositions in digital format.

8. Any and all written communications concerning the Eminem Compositions, including any and all communication between you and any other of the Defendants in this action and/or any other third party.

9. Each and every document or communication between Apple and UMG relating to, referring to, or pertaining to the reproduction, distribution, and sale of the Eminem Compositions to end users Apple's iTunes Store.

10. Each and every document, communication, license, or agreement that you allege gives Apple the authority to reproduce, distribute, and sell sound recordings of the Eminem Compositions to end users through digital downloads from Apple's iTunes Store.

11. Each and every document, communication, license, or agreement that you allege gives UMG, Interscope, and/or Aftermath the authority to license or otherwise authorize Apple to reproduce, distribute, and sell sound recordings of the Eminem Compositions to end users through digital downloads from Apple's iTunes Store.

12. Each and every document or communication that refers to, relates to, or pertains to the negotiation and formation of the March 9, 1998 Agreement, the 2003 Agreement, or any other agreement or license concerning the Eminem Compositions.

13. Each and every document that demonstrates, shows or otherwise indicates the date(s) that copies of sound recordings of the Eminem Compositions were made for

any purpose, including but not limited to interactive and non-interactive streaming transmissions, permanent and conditional downloads, mastertones and ringtones.

14. Each and every document that shows all sales and distribution figures (including but not limited to free and promotional copies), revenues, expenses, profit and losses, and reserves for the sale or distribution of the sound recordings of the Eminem Compositions, both domestically and internationally, in any digital media, including but not limited to interactive and non-interactive streaming transmissions, permanent and conditional downloads, mastertones and ringtones, including but not limited to any accountings and all supporting documentation, invoices, statements or other calculations.

15. Each and every document showing all money or revenue earned and/or received by Defendants for the sale or distribution or the licensing for sale, distribution, or exploitation of the Eminem Compositions, including any fees and royalties collected by Defendants, in any digital media, including but not limited to interactive and non-interactive streaming rights, advertising, mastertones and ringtones, including the accounting period in which the revenue was earned, the quarter in which the revenue was received and the source of such revenue.

16. Each and every document showing all payments from Apple to Universal for the sale or distribution of the Eminem Compositions on the iTunes Store.

17. Each and every document pertaining to the actual number of sales, including but not limited to the number of downloads of sound recordings of the Eminem Compositions on Apple's iTunes Store.

18. Each and every document that shows payments made to Plaintiffs or Eminem in connection to the distribution or sale of sound recordings of the Eminem Compositions for digital download, streaming, mastertones, and ringtones.

19. All documents referencing or showing any of your costs related to the downloading or streaming of sound recordings of the Eminem Compositions.

20. Each and every document that in any way relates to, refers to, or pertains to any expert witness(es) that you have communicated with relating to the claims brought in this lawsuit, including, but not limited to, any and all correspondence, billing records, documents received from such expert witness, and treatises or other documents referred upon by such expert witness in forming his or her opinion, as well as a curriculum vitae for any expert witness hired or retained by you.

21. To the extent not already produced, all documents reviewed or relied upon in this litigation by any expert witness hired or retained by you.

22. Each and every mechanical license for the reproduction of the Eminem Compositions pursuant to the requirements of the U.S. Copyright Act.

23. Copies of any and all requests from Apple and UMG to the Plaintiffs to issue or execute licenses for the mechanical reproduction of the Eminem Compositions, or any of them.

24. Copies of any and all licenses between Plaintiffs and Apple or UMG executed by Plaintiffs for the mechanical reproduction of the Eminem Compositions, or any of them.

25. Copies of any and all "Notices of Intention to Obtain a Compulsory License for Making and Distributing Phonorecords" under 17 U.S.C. § 115 received by you.

26. Copies of any and all mechanical licenses between Apple and any third party.

27. Beginning one year prior to the date of the first Eminem agreement and continuing every year thereafter (at least one for each year), the standard language from the basic form recording agreement predominantly being used among UMG's labels with respect to the so-called Controlled Compositions provisions, the definitions of the terms "record" and "new medium."

28. Any and all communications between Apple and the Recording Industry Association of America (RIAA) concerning whether the labels would indemnify Apple on this issue.

Dated: February 12, 2008

Norman C. Ankers (P30533)
HONIGMAN MILLER SCHWARTZ AND COHN LLP
2290 First National Building
660 Woodward Avenue
Detroit, Michigan 48226-3506
(313) 465-7306
nankers@honigman.com

- and -

Richard S. Busch
KING & BALLOW
1100 Union Street Plaza
315 Union Street
Nashville, Tennessee 37201

(615) 726-5422
rbusch@kingballow.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served via Hand Delivery to the following:

Counsel	On behalf of
Daniel D. Quick, Esq. Dickinson Wright PLLC 38525 Woodward Ave Suite 2000 Bloomfield Hills, MI 48304 (t): (248) 433-7200 (e): dquick@dickinsonwright.com Kelly M. Klaus, Esq. Munger, Tolles & Olson LLP 355 South Grand Ave Suite 3500 (t): (213) 683-9238 (e): kelly.klaus@mto.com	Apple Computer, Inc. and Aftermath Records d/b/a Aftermath Entertainment

this 12th day of February 2008.